

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

CHRISTINA CONNELLY,                    )  
  ) C.A. No. 08C-05-031 (JTV)  
                          Plaintiff,            )  
  )  
                  v.                            )  
JOANNE KINGSLAND,                    )  
  )  
                          Defendant.        )

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CHRISTINA CONNELLY,                    )  
  ) C.A. No. 09C-10-016 (WLW)  
                          Plaintiff,            )  
  )  
                  v.                            )  
DONALD B. BROWN, JR.,                )  
  )  
                          Defendant.        )

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DEANNA ROBERTS,                        )  
  ) C.A. No. 09C-10-016 (WLW)  
                          Plaintiff,            )  
  )  
                  v.                            )  
DONALD B. BROWN, JR.,                )  
  )  
                          Defendant.        )

*Submitted: April 9, 2010*

*Decided: July 30, 2010*

William D. Fletcher, Esq., Schmittinger & Rodriguez, Dover, Delaware. Attorney for Plaintiff Connelly.

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Vincent A. Bifferato, Jr., Esq., Bifferato, Gentilotti, LLC, Newark, Delaware.  
Attorney for Plaintiff Roberts.

Brian T. McNelis, Esq., Young & McNelis, Dover, Delaware. Attorney for  
Defendant Kingsland.

Mary E. Sherlock, Esq., Weber, Gallagher, Simpson, Stapleton, Fires & Newby, LLP,  
Dover, Delaware. Attorney for Defendant Brown.

*Upon Consideration of Plaintiff Connelly's  
Motion to Consolidate*

**GRANTED**

**VAUGHN, President Judge**

### **ORDER**

Upon consideration of the motion to consolidate filed by the plaintiff Christina Connelly, the defendants' opposition thereto, and the record of this case, it appears that:

1. Plaintiff Christina Connelly was involved in two separate motor vehicle accidents, one on May 26, 2006, and the other on October 12, 2007.
2. She filed two separate actions, one for each accident. The defendant in the action arising from the May 26, 2006 accident is Joanne Kingsley. The defendant in the action arising from the October 12, 2007 accident is Donald B. Brown, Jr.
3. Another plaintiff, Deanna Roberts, alleges that she was also injured in the

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October 12, 2007 accident. She filed her own separate suit against defendant Brown. The two actions filed against defendant Brown, the one by plaintiff Connelly and the one by plaintiff Roberts, have previously been consolidated by agreement of all parties to those actions.

4. Plaintiff Connelly now moves to consolidate the previously consolidated actions arising from the October 12, 2007 accident with her action against defendant Kingsland arising from the May 26, 2007 accident. Defendants Brown and Kingsland both oppose the motion. Plaintiff Roberts does not oppose the motion.

5. In support of her motion, plaintiff Connelly contends that she “anticipates that each defendant will point to the other as being the cause of her most significant injuries.”<sup>1</sup> She contends that, due to this likely defense strategy, the cases should be consolidated to avoid possibly inconsistent verdicts. She also contends that it would be preferable to have one jury determine which injuries are attributable to each accident. She also contends that the defendants’ negligence in causing the accidents will not be a significant issue in either case.

6. Defendant Kingsland opposes the plaintiff’s motion on two grounds. First, she notes that her case is fully prepared for trial, whereas the other actions are still in discovery and not scheduled for trial until June 2011. She notes that consolidating

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<sup>1</sup> Plaintiff Connelly’s Mot. ¶ 4.

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the cases would require waiting for the later-filed case to fully develop, resulting in a delay that would prejudice her interests. Second, she contends that consolidation will require her attorney, Mr. Brian McNelis, Esquire, to withdraw from representing her because he also represented defendant Brown for a short period of time in the two actions to which he is a party. In this regard, the first action filed was the one against defendant Kingsland. Mr. McNelis entered his appearance on her behalf. When the two actions were later filed against defendant Brown, Mr. McNelis entered his appearance on defendant Brown's behalf in both, not realizing at the time that there may be a connection between the case against defendant Kingsland, on the one hand, and the actions against defendant Brown, on the other. Mr. McNelis subsequently withdrew from representing defendant Brown, and defendant Brown is now represented by Ms. Mary Sherlock, Esquire. Defendant Kingsland contends that consolidation would jeopardize her defense strategy because her attorney's conflict would prevent her attorney from arguing that the plaintiff's injuries were caused by defendant Brown.

7. Defendant Brown also opposes the plaintiff's motion. First, he contends that consolidating the two cases would be unnecessarily confusing to the jury. Next, he argues that consolidation would not be cost efficient nor an economical use of the Court's time and resources. Finally, he states that the plaintiff's treating physicians have not apportioned her injuries.

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8. A motion to consolidate is considered under Delaware Superior Court Civil Rule 42(a), which reads:

When actions involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

“The decision to consolidate two civil actions is within the discretion of the trial court.”<sup>2</sup> The moving party has the burden to show that consolidation is desirable.<sup>3</sup> The initial inquiry is whether the cases share a common question of law or fact.<sup>4</sup> The next question is whether justice can be administered without multiple suits.<sup>5</sup> In order to answer that question, the court must “weigh the possible saving of time and effort that consolidation would advance against any inconvenience, delay, or expense that

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<sup>2</sup> *Earl D. Smith, Inc. v. Carter*, 2000 WL 972825, at \*1 (Del. Super.).

<sup>3</sup> *Watkinson v. Great Atlantic & Pacific Tea Co.*, 585 F. Supp. 879, 883 (E.D. Pa. 1984); *See also Shump v. Balka*, 574 F.2d 1341, 1344 (10th Cir. 1978).

<sup>4</sup> Del. Super. Ct. Civ. R. 42(a); *Olson v. Motiva Enter., L.L.C.*, 2003 WL 21733137, at \*4 (Del. Super.).

<sup>5</sup> *Olson*, 2003 WL 21733137, at \*4.

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it would occasion.”<sup>6</sup> “Generally, consolidation is appropriate when ‘any confusion or prejudice does not outweigh efficiency concerns.’”<sup>7</sup>

9. The prerequisite for consolidation has been met - there is a common issue of fact. The two cases share the following common issue of fact: to what extent, if any, did each motor-vehicle accident contribute to plaintiff Connelly’s injuries?

10. Apart from the issue of her counsel’s conflict of interest, which I discuss below, defendant Kingsland does not identify any specific prejudice to her by the passage of time to a joint trial. The arguments of defendant Brown that consolidation would confuse the jury, be inefficient, or uneconomical for the Court are unpersuasive. The plaintiff’s concern that separate trials may result in “inconsistent

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<sup>6</sup> *Mirarchi v. Picard*, 2002 WL 749164, \*1 (Del. Ch.). There are a number of factors to consider:

Whether testimony will overlap by having the same witnesses and documents; whether continued separation will impose duplication, double expense, and not be conducive to expedition of the trial; whether consolidation will cause an undue surprise or hardship to a party; whether separate judgments may be given to separate parties to prevent prejudice; and whether confusion will result from the combination of the cases.

*Olson*, 2003 WL 21733137, at \*5 (citing *Hoyle v. Mueller*, 1990 WL 18299, at \*4 (Del. Super.)).

<sup>7</sup> *Freibott v. Miller*, 2009 WL 2031704, at \*2 (Del. Super.) (quoting *Primavera Familienstiftung v. Askin*, 178 F.R.D. 405, 411 (S.D.N.Y. 1998)).

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verdicts” has some merit and is a factor in favor of consolidation. After considering the arguments of counsel, the standard for consolidation, and the record of the case, I conclude that consolidation is appropriate.

11. I reach this conclusion with some reluctance because of defendant Kingsland’s counsel’s conflict issue. If it is necessary for him to withdraw, however, I am satisfied that the insurer will be able to designate new counsel for defendant Kingsland and that the course of the litigation can continue under new counsel without prejudice to her.

12. The motion to consolidate is ***granted***.

**IT IS SO ORDERED.**

/s/ James T. Vaughn, Jr.

cc: Prothonotary  
Order Distribution  
File